On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO THE UNITED STATES OF AMERICA'S PETITION FOR A WRIT OF CERTIORARI

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RALPH STUART GRANDERSON

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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, Petitioner and Cross-Respondent, v. RALPH STUART GRANDERSON, Respondent and Cross-Petitioner.	)	NO. 92-1662

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

COMES NOW Respondent and Cross-Petitioner, RALPH STUART GRANDERSON, by and through his undersigned counsel, and pursuant to Rule 46, Rules of the Supreme Court of the United States, moves this Court for an Order granting him leave to proceed in forma pauperis, and in support thereof shows this Court the following:

1) Mr. Granderson was determined indigent by the lower court, pursuant to Title 18 U.S.C. § 3006(a), and counsel was appointed to represent him on appeal before the United States Court of Appeals for the Eleventh Circuit.

2) Mr. Granderson remains indigent and wishes to respond to the petition for a writ of certiorari filed by the United States of America, and also to cross-petition this Court for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, which vacated the judgment of the District Court on August 4, 1992.

WHEREFORE, Mr. Granderson respectfully requests that this Court grant his motion and allow him to proceed in forma pauperis.

Dated this 19th day of May, 1993.

Respectfully submitted,

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UNITED STATES OF AMERICA

Petitioner and Cross-Respondent,

v.

RALPH STUART GRANDERSON,

Respondent and Cross-Petitioner.

PROOF OF SERVICE

I, GREGORY S. SMITH, do swear or declare that on this date, May 19, 1993, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and BRIEF IN OPPOSITION TO THE UNITED STATES OF AMERICA'S PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.

The names and addresses of those served are as follows:

William C. Bryson
Acting Solicitor General
Department of Justice
Washington, DC 20530
(202) 514-2000

Subscribed and sworn to
Before me this 19th day
of May, 1993

GREGORY S. SMITH
Affiant

NOTARY PUBLIC in and for
said County and State

Notary Public, Georgia
My Commission Expires

I.

QUESTION PRESENTED

Whether this Court should grant certiorari to resolve the issue of whether 18 U.S.C. § 3565(a), which requires a probationer who is found to be "in possession" of a controlled substance to be sentenced to one-third of his "original sentence," means that such a probationer must be sentenced to one-third of his term of probation rather than one-third of the original sentence that legally could have been imposed--notwithstanding a clear trend in the United States Courts of Appeal in favor of the latter interpretation?

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On Petition by the United States of America
for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO UNITED STATES OF AMERICA'S
PETITION FOR A WRIT OF CERTIORARI

Ralph Stuart Granderson, Respondent and Cross-Petitioner in the above-styled action, respectfully opposes the United States of America's Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit. While the Government correctly notes that the legal question it raises currently is the subject of a split in the United States Circuit Courts of Appeal, the Government fails to adequately note that the clear trend among those circuits has been in favor of Respondent's legal interpretation of this issue, which was adopted by the Eleventh Circuit. When the Government petitioned the Eleventh Circuit for

rehearing or rehearing en banc, not a single member of that Court even requested a polling of its members on the issue. Since that time, two other United States Circuit Courts have issued extensive, well-reasoned published opinions that follow the Eleventh Circuit's interpretation of the law on this issue. Accordingly, Respondent and Cross-Petitioner Granderson requests that the Government's petition for a writ of certiorari be denied.

CITATION TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported as United States v. Granderson, 969 F.2d 980 (11th Cir. 1992). The order of the United States District Court for the Northern District of Georgia is unreported. The text of the appellate opinion and the district court's order are included, respectively, as Appendices A and B to the Government's Petition for a Writ of Certiorari.

STATEMENT OF THE CASE

Prior to this offense, Ralph Stuart Granderson had worked for approximately 5 1/2 years as a mail carrier with the United States Postal Service. This employment followed his honorable discharge from the United States Army. (App., infra, 11a at ¶¶ 41 & 45). Mr. Granderson had no prior record of convictions, juvenile adjudications or even arrests. (App., infra, 8a-9a at ¶¶ 27-31). The Internal Revenue Service confirmed that his income was being reported in annual tax returns. (App., infra, 13a at ¶ 55).

After a postal investigation suggested that Mr. Granderson might be tampering with mail, Mr. Granderson was confronted on June 20, 1990. Although initially denying knowledge of any wrongdoing, he signed a waiver of his rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) and consented to a search of his person. A "test case" letter placed in Mr. Granderson's mail bag by postal inspectors was found in his shoe. (App., infra, 6a-7a at ¶ 13). Mr. Granderson then signed a sworn written statement, in which he acknowledged his criminal activity, and explained that he had taken money from the letters due to his heavy debt. He offered to pay back the money and asked, if possible, that he be allowed to keep his job. (App., infra, 7a at ¶ 14-15).

Mr. Granderson was not allowed to keep his postal job. That same day, he resigned from his position with the Postal Service because of this offense. (App., infra, 7a at ¶ 16). His salary at that point had been $29,881. (App., infra, 11a at ¶ 41). Following this resignation, Mr. Granderson surrendered his only real asset, a truck, to GMAC because he could no longer make payments, and with $26,139.00 in debt, Mr. Granderson was forced to consider filing for Chapter 13 bankruptcy. (App., infra, 13a at ¶¶ 56-57). Mr. Granderson nevertheless did not seek public assistance, but kept working. He was able to find and maintain consistent employment, although his wages dropped to approximately $4.50 per hour. (App., infra, 10a at ¶¶ 38-40). He paid full restitution prior to the time the criminal information was filed.

(App., infra, 7a at ¶ 21). At the car wash job he ultimately landed and held from September 1990 until the time he ultimately was incarcerated for revoking probation, Mr. Granderson's boss stated that his attendance and work habits were good. He was described as one of the company's most reliable employees, his attitude toward customers was described as excellent, and his boss called him a team leader. (App., infra, 10a at ¶ 38).

On January 3, 1991, Mr. Granderson initially appeared in the United States District Court for the Northern District of Georgia. At that time, he agreed to waive indictment and to proceed by way of a criminal information. On January 11, 1991, Mr. Granderson pled guilty to a criminal information charging him with delay or destruction of mail, in violation of 18 U.S.C. § 1703(a). (App., infra, 1a).

Mr. Granderson's Presentence Report ultimately revealed a range under the United States Sentencing Guidelines of zero to six months. (App., infra, 20a). On March 18, 1993, Mr. Granderson was placed on five years' probation by the Hon. William C. O'Kelley. Mr. Granderson also was ordered to pay a $2000 fine and a $50 special assessment. United States v. Granderson, 969 F.2d 980, 981 (11th Cir. 1992).

On June 28, 1991, Mr. Granderson's probation officer filed an application to revoke Mr. Granderson's probation. The petition stated that Mr. Granderson had "possessed/used drugs in that . . . Probationer rendered [two] urine samples which tested positive for cocaine metabolite." (App., infra, 24a).

At a revocation hearing held July 29, 1991, the district court held that Mr. Granderson's use of a controlled substance, as evidenced by his urine samples which had tested positive for cocaine, necessarily meant that he was "in possession" of a controlled substance, requiring the court to sentence him to "not less than one-third of the original sentence." 18 U.S.C. § 3565(a). (App., infra, 35a-36a & 38a).[1] The district judge then noted, "The question is: What was the original sentence? In this case there was no original sentence to jail." (App., infra, 30a-31a).

The Government then explained its position that the five years of probation represented the sentence. (App., infra, 31a). In doing so, the Assistant United States Attorney conceded that "It's very hard and I had difficulty conceptualizing probation as the sentence," but nevertheless stated the Government's position as "that is the interpretation." (App., infra, 31a).

The district court ultimately agreed with the Government, telling Mr. Granderson that "I just don't feel I have any choice but to revoke probation and impose 20 months." (App., infra, 39a). While ruling in this manner, the Court openly stated its belief that the sentence it was imposing was unjust. Some comments were brief. See, e.g., App., infra, 39a ("I have real difficulty with it"); App., infra, 39a ("applying a bunch of numbers in a very

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[1] The district court's finding, that evidence of drug "use" established through positive urine screens necessarily means that a defendant is "in possession" of a controlled substance, is the subject of Mr. Granderson's cross-petition for a writ of certiorari.

drastic method"); App., infra, 39a ("I would certainly not impose the 20 months under the Guidelines"); App., infra, 39a ("I frankly don't like it"); App., infra, 41a ("it's not an interpretation I like"); App., infra, 42a ("I am very sympathetic with your argument"). Other comments were more direct:

> But 10 times more or a mandatory four times more [than the maximum original sentence the defendant would have received under his sentencing guideline range] is a little harsh. But that's what you get when you start dealing with statistics and mathematics instead of human beings.

(App., infra, 35a).

> There's no other way to describe them other than they're harsh ... even by my standards let me say they're harsh, and my standards are not known to be lenient.

(App., infra, 39a).

> I don't object to your appealing this, certainly. Frankly, I would otherwise sentence him to something in a year range.

(App., infra, 43a).

> I would hope you would appeal it and win. I don't often like to be reversed, but if you did, it would be a case that wouldn't bother me on the interpretation of the law issue.

(App., infra, 43a-44a). The district judge also imposed three years of supervised release to follow Mr. Granderson's term of imprisonment. (App., infra, 42a-43a).

Mr. Granderson appealed his sentence, and the United States Court of Appeals for the Eleventh Circuit ultimately vacated the district court's imposition of 20 months' imprisonment. United States v. Granderson, 969 F.2d 980 (11th Cir. 1992). The court of

appeals noted that "[t]he statute does not specify whether the term 'original sentence' refers to the term of probation or to the range of incarceration established by the Guidelines." Id. at 983. The court of appeals ultimately determined that the better interpretation was the latter.

In reaching this conclusion, the court of appeals considered both the Government's arguments and citations of authority. Although the Government's interpretation of the law at that point represented the majority view, see United States v. Corpuz, 953 F.2d 526 (9th Cir. 1992) and United States v. Byrkett, 961 F.2d 1399 (8th Cir. 1992), and the only contrary opinion came with a dissent, United States v. Gordon, 961 F.2d 426 (3d Cir. 1992), the Eleventh Circuit sided with the Gordon majority and ruled against the Government.

The court of appeals ruled this way for several reasons. First, in part because the term "original sentence" was nowhere defined, the court of appeals found the statute to be ambiguous, and held that the rule of lenity should be considered due to "our reluctance to increase or multiply punishments absent a clear and definitive legislative directive." Id. at 983.

Second, the court of appeals noted that its ruling did not inhibit the Government from seeking more prison time if it were dissatisfied with the sentence Mr. Granderson received:

> He was never convicted or even charged with possession of cocaine. The Government was free to indict him on drug charges but chose not to do so.

Id. at 983.

Third, the court of appeals noted that the United States Sentencing Commission, in following statutory mandates to establish a uniform system of sentencing, had interpreted probation as a trust, and penalties for violations of probation to be sanctions for breaches of that trust rather than sentencings for new criminal conduct. Because Mr. Granderson was facing no more than six months' imprisonment under the Sentencing Guidelines at the time of his initial sentencing, he could not be subjected to more than that for revocation of probation:

> The length of Granderson's original sentence is limited by the Guideline range available at the time he was sentenced to probation. If Granderson could not be subjected to [twenty] months incarceration for the crime of which he was convicted, he cannot now be sentenced to that term for violation of his probation. Moreover, by the Government's contorted mathematics, Granderson would be considered to have had an "original sentence" of sixty months' incarceration, which is not consistent with the Guidelines.

Id. at 983.

Fourth, the court of appeals disagreed with the Government's view that Mr. Granderson's five-year term of probation was the "original sentence" for purposes of 18 U.S.C. § 3565(a):

> Probation and imprisonment are not fungible. As the Third Circuit noted, probation is a form of "conditional liberty" that is likely to be longer than a term of imprisonment. In this case, instead of a possible six months incarceration, Granderson received five years probation, a restraint on his liberty that is less severe than imprisonment, but lasts ten times longer. The trade-off was undoubtedly worthwhile to the defendant and illustrates the fallacy of simply converting a term of probation into one of incarceration without taking these differences into account.

Id. at 984.

Finally, the court of appeals also rejected the Government's claim that § 3565(a) was completely analogous to § 3583(g), which mandates revocation of one-third of a defendant's "term of supervised release" when such a defendant is found to be in the possession of a controlled substance:

> Supervised release . . . is different from probation. When a defendant receives a sentence of probation, it is an alternative to imprisonment; a defendant serving time on supervised release has already served his sentence of incarceration and is subject to supervision analogous to what was formerly called "special parole."

Id. at 984. The court of appeals did not dispute that "Congress intended to prescribe harsh penalties for possession of drugs." Id. at 984. It nevertheless found that its interpretation, which eliminated a judge's discretion to consider lesser alternatives such as continuing, extending or modifying the terms of probation, "produces a strict penalty for violation of probation due to possession of a controlled substance." Id.

The court of appeals ordered Mr. Granderson immediately released from custody. The Government later filed petitions for rehearing and rehearing en banc, both of which were denied. United States v. Granderson, 980 F.2d 1449 (11th Cir. 1992). Following those denials, the Government ultimately filed the instant petition for a writ of certiorari. United States v. Granderson, 61 U.S.L.W. 3741 (U.S. filed April 15, 1993).

SUMMARY OF ARGUMENT

Certiorari is not needed in this case. While a circuit split does exist on the interpretation of the phrase "original sentence" in 18 U.S.C. § 3565(a), the only two circuits that support the Government's position are the first two circuits to have filed final written opinions on the issue. Since that time, more extensive analysis has led every other circuit considering the issue to reject the Government's interpretation of 18 U.S.C. § 3565(a). This analysis has revealed both the logical and practical problems with the Government's analysis. Respondent submits that the true reason for the circuit split may be due to the simple fact that the first two circuits to consider the issue have not yet taken the issue en banc to determine whether their previous panel opinions ought to be overruled in light of the significant recent precedent rejecting their circuits' analysis. This Court's intervention may never be necessary to resolve the conflict among the circuits, and it would be premature for this Court to accept certiorari here.

ARGUMENT

1. This Court should not grant certiorari on this issue. While the Government correctly notes that a split exists among the United States Courts of Appeal over the interpretation of the phrase "original sentence" in 18 U.S.C. § 3565(a), the trend among those circuits is decidedly in favor of Respondent's view. This Court need not settle the circuit conflict at this stage, for Mr.

Granderson submits that the conflict ultimately may be resolved without intervention by the United States Supreme Court.

The trend is decidedly in favor of Mr. Granderson's interpretation of the law. The only two circuit decisions favoring the Government's view are the first two circuits filing final published decisions. United States v. Byrkett, 961 F.2d 1399 (8th Cir. 1992) (per curiam); United States v. Corpuz, 953 F.2d 526 (9th Cir. 1992).[2] Since that time, every other United States Circuit Court of Appeal that has considered the issue has rejected the Government's analysis. United States v. Diaz, 989 F. 2d 391 (10th Cir. 1993); United States v. Clay, 982 F.2d 959 (6th Cir. 1993); United States v. Granderson, 969 F.2d 980 (11th Cir. 1992); United States v. Gordon, 961 F.2d 426 (3d Cir. 1992).

Not only have these panels rejected the Government's view, but also there is reason to believe that support for Mr. Granderson's position is broader. In the instant case, the Government filed an oversized petition for rehearing en banc before the Eleventh Circuit Court of Appeals. Not a single member of panel or the court of appeals in active service even requested a polling on the issue of whether rehearing en banc ought to be granted. United States v. Granderson, 980 F.2d 1449 (11th Cir. 1992) (denying

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[2] Byrkett was decided April 24, 1992. This was before the Third Circuit issued its final opinion, as amended, in United States v. Gordon, 961 F.2d 426 (3d Cir. 1992) (filed as amended April 30, 1992). While Gordon actually was decided April 13, 1992, Byrkett did not cite Gordon, and there is no indication that the Eighth Circuit was even aware of any conflicting authority on this point when it issued Byrkett. Its relatively short per curiam opinion simply adopted the Ninth Circuit's rule in Corpuz without further analysis.

Government petitions for rehearing and rehearing en banc). In Clay, the Sixth Circuit similarly rejected a Government petition for rehearing en banc. United States v. Clay, 1993 U.S. App. LEXIS 7333 (6th Cir. April 6, 1993) (denying Government petitions for rehearing and rehearing en banc). Two opinions issued in the Tenth Circuit shortly after Diaz similarly may reflect broader support within that circuit for the interpretation of § 3565(a) adopted there. United States v. Roberson, 1993 U.S. App. LEXIS 7496, 1993 WL 103687 (10th Cir. filed April 9, 1993); United States v. Keith, 1993 U.S. App. LEXIS 7716 (10th Cir. filed April 2, 1993).[3]

The only recent development in this area of the law that the Government suggests is favorable to its position is based on its claim that "[t]he Ninth Circuit recently declined to depart from its holding in Corpuz despite the existence of the circuit conflict. See United States v. Avakian, No. 92-10269, 1992 U.S. App. LEXIS 32326 (9th Cir. Dec. 2, 1992)." Government's Petition at 9 note 5. The Avakian opinion cited by the Government, however, involved nothing more than the Avakian panel simply noting that it was bound by the previous panel's decision in Corpuz. Even in that context, Circuit Judge Norris of the Avakian panel specifically noted, in a concurring opinion, that while he agreed Corpuz represented binding precedent on the panel, "I think Corpuz was decided incorrectly." He stated that he believed the "more

[3] One judge in Roberson did write separately, stating that he would have followed the decisions of Corpuz and Byrkett. That judge appears to be the only circuit judge in the country since Gordon was issued in final form to have openly stated support for the reasoning in Corpuz and Byrkett.

sensible approach" was the one adopted by the Third Circuit in Gordon and the Eleventh Circuit in this case.

In light of this open criticism, made even before the Sixth Circuit's Clay opinion and Tenth Circuit's Diaz opinion were issued, it is certainly possible that the Ninth Circuit may reconsider this issue in the near future without any need for this Court to intervene.[4] If it does, the Eighth Circuit's reconsideration of its rule, which was established in a short per curiam affirmance that simply adopted what it apparently believed was the Ninth Circuit's unquestioned rule in Corpuz, would seem not far behind.[5]

[4] While the Ninth Circuit denied petitions for rehearing and rehearing en banc in Avakian, see United States v. Avakian, Appeal No. 92-10269 (9th Cir. Feb. 4, 1993), that denial occurred prior to the Tenth Circuit's Diaz opinion and without reference to Clay. Mr. Avakian admittedly has continued to pursue the issue by filing in this Court a petition for a writ of certiorari, raising both the issue raised by the Government in this petition and the issue raised by Mr. Granderson in his cross-petition. Avakian v. United States, No. 92-8656 (U.S. cert. filed May 5, 1993).

[5] In addition to the growing number of circuits rejecting Corpuz's analysis, the reasoning in Corpuz is internally suspect. As an "additional consideration" which it believed supported its interpretation, Corpuz claimed that the defendant had committed a "Grade A" violation under U.S.S.G. § 7B1.1(a)(1), because the defendant's possession of methamphetamine was a "controlled substance" offense. Corpuz noted that, under the revocation table, a Grade A violation carried a revocation range of 12-18 months, confirming that its 12-month revocation sentence was reasonable.

Corpuz plainly erred in believing that the defendant's violation was a "Grade A" violation. The court apparently failed to examine the definition of a "controlled substance" offense, which exempts simple possession cases from its classification. See infra, at 20 (examining U.S.S.G. § 7B1.1). Thus, rather than supporting the Corpuz analysis, the Guidelines lead to far lower sentences than Corpuz mandated; Corpuz's maximum sentence under the revocation table would have been only 9 or 10 months.

Mr. Granderson submits that the circuits may not truly be as "sharply divided" as the Government suggests in its petition. See Government Petition at 7. Even if the Government is correct that the relevant arguments have been "exhaustively canvassed" by the lower courts as a whole, Government Petition at 9 note 4, these arguments brought out by the recent decisions have never been "exhaustively canvassed" by the Eighth and Ninth Circuits, which were the first to address the issue. If and when they are, Mr. Granderson submits that it is likely these circuits will join the others, and eliminate the circuit conflict. Cf. United States v. Rockwell, 984 F.2d 1112, 1116-17 (10th Cir. 1993), cert. filed on other grounds, No. 92-8557 (U.S. filed Apr. 27, 1992) (overruling United States v. Boling, 947 F.2d 1461 (10th Cir. 1991), following other circuits' rejection of Boling's analysis of the supervised release statute; circuit conflict eliminated). Mr. Granderson disagrees with the Government's contention that "there is no reason to await further consideration of the issue in the lower courts." Government Petition at 9 note 4.

2. All of the Government's arguments brought before this Court have been repeatedly rejected, both directly in recent opinions and indirectly through denials of rehearing en banc. Respondent believes these issues have been reviewed at length in recent cases, and will not take the Court's time to reiterate them here. Instead, Mr. Granderson directs this Court specifically not only to the court of appeals' opinion below, but also to what he submits is perhaps the most comprehensive analysis of this issue,

found in the case of United States v. Clay, 982 F.2d 959 (6th Cir. 1993).

In that case, Ms. Clay initially had been given a three-year term of probation and the district court had imposed a year of imprisonment upon revocation due to her possession of a controlled substance. On appeal, a unanimous panel of the United States Court of Appeals for the Sixth Circuit vacated her sentence and remanded the case for resentencing. The Sixth Circuit rejected the Government's interpretation of this statute and found that the "original sentence" meant the sentence of imprisonment originally available at the time probation was originally imposed, not the "term of probation" imposed on Ms. Clay.

The Sixth Circuit first evaluated the statute itself, utilizing various tenets of statutory construction. These included a view of probation as a "sentence," an examination of the most natural interpretation of the language, a view of this provision in the context of other portions of § 3565(a), and a comparison of this language to the arguably analogous supervised release provision found at 18 U.S.C. § 3583(g). The Sixth Circuit also reviewed the statute in the overall context of the Anti-Drug Abuse Amendment of 1988 which had enacted it into law, evaluated it in terms of maintaining the integrity of the United States Sentencing Guidelines, and considered the possible applicability of the rule of lenity. After conducting this thorough review, the Sixth Circuit ultimately concluded that the better interpretation was the one presented by Ms. Clay, and rejected the Government's analysis.

These general arguments are adequately addressed in the opinions of the Third, Sixth, Tenth and Eleventh Circuits. In addition to these general arguments, however, Mr. Granderson submits the following specific illustrations, which have not been addressed in those decisions. These illustrations reveal the numerous inequities and problems with the Government's interpretation of this law.

Chapter Seven of the Sentencing Guidelines strongly suggests that the Sentencing Commission did not adopt the Government's view of "original sentence." In other contexts, where mandatory minimum sentences exist, the Sentencing Commission has been careful to establish guidelines that track those mandatory minimums. See, e.g., 2D1.1 Background (guideline base offense levels are "proportional to the levels established by statute"). In the case of probation violations, by contrast, simply being "in possession" of a controlled substance, without more, would not represent a "Grade A" violation. See U.S.S.G. § 7B1.1(a)(1) & Application Note 3 (cross-referencing U.S.S.G. § 4B1.2; "controlled substance offense" does not include simple possession). Thus, the Commission's guidelines adopted for Mr. Granderson's alleged possession would be 3-9 months or, at most, 4-10 months -- nowhere near the 20 months the Government recommends.

Indeed, even if Mr. Granderson's probation revocation had been based on distribution of a controlled substance, or aiding and abetting or conspiring in such distribution, all "Grade A" violations obviously far more severe than simple possession,

U.S.S.G. § 7B1.4 would carry a sentencing range upon revocation for Mr. Granderson of only 12-18 months -- still below the mandatory 20 months the Government recommends. In other words, the Government's proposed § 3565(a) interpretation would mandate a more severe sentence for a probationer found in possession of a controlled substance than the Sentencing Commission's suggested sentence for a similar person directly involved in distributing that drug.

The Government's interpretation also would create other inequities. For example, if a first offender charged with a Class E felony had an offense level of 6, his range would be zero to six months. Like Mr. Granderson, that first offender might be placed on five years' probation. If a person with the worst criminal history category of VI had committed the same offense, that person's original sentence guidelines range would be 12-18 months. If that person similarly were shown some leniency and sentenced at the low end of his range, 12 months, no supervised release would be required at all. Even if it were given, no more than one year of supervised release would be possible under U.S.S.G. § 5D1.2(b)(3).

Under the Government's interpretation, this person with the lowest criminal history score would have a higher mandatory term of imprisonment (20 months) and a higher maximum exposure (60 months) than the person with the highest criminal history score (12 months + mandatory 4 months upon revocation; maximum exposure 18 months + 1 year). In fact, the disparity could be even greater, for upon revocation the first offender would, like Mr. Granderson, have a mandatory supervised release term ordered to follow his mandatory

term of imprisonment upon revocation. Such disparities are not rational, and they are not what Congress intended when it enacted this clause of § 3565(a)(2).

The Government's interpretation would cause other problems as well. For example, 18 U.S.C. § 3561(b)(2) authorizes a five-year term of probation for a misdemeanor. By the Government's interpretation, a defendant so sentenced would be statutorily required to spend 20 months in jail if he then possessed illegal drugs -- more than the statutory maximum. Because the mandatory one-third revocation amendment to § 3565(a) post-dates many of these statutory maximums, it arguably would override them, completely redefining the federal misdemeanor classifications.[6]

In addition to these substantive disparities, the Government's interpretation of this statute could create procedural concerns. Normally, a defendant subject to a sentence above his or her guideline range has a right to appeal both the fact and extent of the upward departure. 28 U.S.C. § 3742(a)(3). Thus, if a defendant such as Mr. Granderson had an offense level of six and a

[6] The Government attempts to minimize this problem by generalizing the issue. It suggests that "[i]n some cases--frequently cases involving misdemeanors" the Sentencing Guidelines establish a maximum term of probation of 36 months, meaning that the one-third revocation period it advocates would bring only 12 months. Government's Petition at 8 note 3. The Government's attempt to avoid the specifics of this matter should be recognized by this Court. The guidelines do not tie the maximum term of probation to whether an offense is a felony or a misdemeanor; rather, the maximum term of probation is tied to a defendant's offense level. U.S.S.G. § 5B1.2. Up to five years of probation is authorized for anyone, including a misdemeanant, whose offense level is 6 or higher. The Government does not explain how its interpretation of § 3565(a) prevents misdemeanants from serving more than 12 months in jail.

sentencing guideline range of zero to six months at the time of his initial hearing, and had been sentenced to 20 months in jail, the defendant could appeal that sentence. Even if Mr. Granderson had been in possession of a controlled substance while on bond pending his sentencing, he still would have retained the right to challenge and appeal any upward adjustment in his range or any upward departure from his applicable sentencing guideline range based on this conduct.[7]

If the Government's interpretation of § 3565(a) were adopted, by contrast, Mr. Granderson would not be able to appeal his 20 months in jail. Instead of being viewed as a departure, this lengthy sentence of more than three times his original sentencing range would be based entirely on a mandatory minimum calculation tied to a probationary term that Mr. Granderson was never able to challenge, since the length of probation imposed fell within the guideline range of up to five years' probation. U.S.S.G. § 5B1.2(a)(1). Thus, the Government's interpretation of § 3565(a) is problematic for the additional reason that it cannot be read consistently with the Congressional goal in establishing sentencing appeals in order to eliminate unwarranted sentencing disparities.

[7] The only adjustment that likely would have been affected, if Mr. Granderson had been in possession of illegal drugs while on bond, is that Mr. Granderson might have lost the 2-point downward adjustment he received here for acceptance of responsibility. His offense level would have then been eight, rather than six. Under the current sentencing guidelines, Mr. Granderson's sentencing range still would have been 0-6 months, and a 20-month sentence still would have represented a sizeable upward departure.

In its petition for a writ of certiorari, the Government itself concedes that "[t]he statute contains no definition of the phrase 'original sentence.'" Government's Petition at 10. It further concedes the following:

> To be sure, Congress did not make its meaning as clear in Section 3565(a) as it did in Section 3583(g); Section 3565(a) would have been clearer if Congress had not simply referred to "one third of the original sentence" but had referred instead to "one third of the original sentence of probation."

Government Petition at 12.[8] The Government nevertheless argues that the interpretation of the statute adopted by virtually every circuit judge to examine this issue in the last year is unreasonable.

The consistent recent trend of the circuits away from the Government's view does not represent an "unlikely interpretation of the statute," as the Government suggests. Rather, it represents nothing more than a recognition that this statutory phrase contains some ambiguity, and that various tenets of statutory construction, the rule of lenity, and numerous other arguments mitigate against the harsh and disparate results contained in the Government's interpretation. Cf. United States v. R.L.C., -- U.S. --, 112 S. Ct. 1329, 117 L. Ed. 2d 559 (1992) ("maximum term of imprisonment that would be authorized if [a] juvenile had been tried and

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[8] Actually, if this had been Congress's intent, it could have been clearer still by not using the phrase "original sentence" at all. It could have used the phrase "sentence of probation," contained in the first clause of § 3565(a)(2), or by mandating revocation for one-third of the defendant's "term of probation," in direct parity with the phrase "term of supervised release," used in § 3583(g), a bill passed in the same Anti-Drug Abuse Act of 1988.

convicted as an adult" in 18 U.S.C. § 5037 refers to sentencing guidelines range, not statutory maximum).

The decisions on this issue by a majority of circuits are consistent with 18 U.S.C. § 3553(a), which requires courts to impose a sentence "sufficient, but not greater than necessary" to achieve the penalogical goals listed, including the need for the sentence imposed to "reflect the seriousness of the offense," to "provide the defendant . . . with needed medical care, or other correctional treatment in the most effective manner," and to "avoid unwarranted disparities." If § 3565(a) had truly been designed to subject a probationer, found in possession of a controlled substance, to 10 times his original exposure, and a mandatory sentence of more than three times his original exposure, these courts reasonably believed that there would have been more than an undefined term and a silent Congressional record. See also 21 U.S.C. § 844 (maximum penalty for conviction of simple possession of controlled substance generally is only one year).

If the recent opinions by the circuit courts of appeal are interpreting § 3565(a) incorrectly, as the Government submits, and Congress wishes to clarify this matter in the manner the Government wishes, it can do so easily. Even prior to that time, if the Government is ever dissatisfied with any sentence received by any probationer found to be in possession of a controlled substance, it can file an additional criminal charge against that person for possession of a controlled substance, possibly obtain a conviction, and seek a sentence of incarceration to run consecutive to the

revocation sentence. See U.S.S.G. § 7B1.3(f) (revocation sentence "shall be ordered to be served consecutively to any sentence of imprisonment the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation"). At present, however, there is no reason for this Court to accept the Government's petition for a writ of certiorari. If, in the future, the Eighth or Ninth Circuits reconsider the matter en banc and still reach a conclusion at odds with the more recent opinions of other circuits, the time may become ripe for this Court's intervention. That time is not here yet, however.

CONCLUSION

Review on writ of certiorari is a matter of judicial discretion and should be granted only when there are special and important reasons for it. U.S. Sup. Ct. Rule 10; Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 73, 75 S. Ct. 614, 99 L. Ed. 897 (1955). Because no such reasons exist here, Respondent Granderson respectfully requests that the Government's Petition for a Writ of Certiorari be denied.

DATED: This 19th day of May, 1993.

Respectfully submitted,

GREGORY S. SMITH
Attorney for Respondent and Cross-Petitioner Ralph Stuart Granderson

No. 92-1662

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1992

UNITED STATES OF AMERICA,

Petitioner and Cross-Respondent,

v.

RALPH STUART GRANDERSON,

Respondent and Cross-Petitioner.

On Petition by the United States of America for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

vs. Docket No. 1:91-CR-01
Defendant No. 01

RALPH STUART GRANDERSON, JR.

PRESENTENCE REPORT

Prepared for:	The Honorable William C.O'Kelley United States District Judge
Prepared by:	Rachel A. Scott United States Probation Officer (404) 331-1031
Office Location:	113E
Sentencing Date:	March 18, 1991, 9:00 AM
Offense:	Count 1: Delay or Destruction of Mail, 18 USC §1703(a), a Class D Felony
Plea:	Negotiated Plea of Guilty on January 11, 1991 before Judge O'Kelley
Arrest Date:	Not Arrested
Release Status:	Appearance by summons, no bond required

Identifying Data:

Age:	32
Date of Birth:	June 21, 1958
Dependents:	None
Education:	High School
Race/Sex/Citizenship:	B/M/US
Social Security Number:	226-90-6648
FBI Number:	
USM Number:	

Address:	231 West Hill Street Decatur, Georgia 30030 (404) 378-8040
Detainers:	None known
Assistant U.S. Attorney: Janet King 1800 Richard Russell Bldg. 75 Spring Street, SW Atlanta, Georgia 30303 (404) 331-6183	Defense Counsel: Greg Smith Federal Defender Program, Inc. 101 Marietta Tower, Suite 3310 Atlanta, Georgia 30303 (404) 688-7530
Date report prepared:	February 6, 1991
Revised:	
Mandatory Minimum:	

RE: GRANDERSON, RALPH STUART, JR.

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PART A - THE OFFENSE

Charge(s) and Conviction(s)

1. This offense occurred after November 1, 1987, therefore, the Sentencing Reform Act of 1984 is applicable.

2. The defendant is solely charged in the one-count Criminal Information No. 1:91-CR-01 in the U.S. District Court, Northern District of Georgia. The information charges that from on or about June 2, 1990 to on or about June 20, 1990, Ralph Stuart Granderson, Jr., while employed as a Postal Service carrier, did unlawfully secret, destroy, detain, delay, and open mail which had been entrusted to him and had come into his possession, that is, eight (8) pieces of first class mail, in violation of 18 USC §1703(a), a Class D Felony.

3. Mr. Granderson entered a negotiated plea of guilty to the one-count information on January 11, 1991 before Judge O'Kelley.

Impact of Plea Agreement

4. In exchange for Mr. Granderson's negotiated plea, the Government will recommend a 2 point reduction for acceptance of responsibility. The Government reserves the right to make all facts known and to make recommendations as to specific characteristics and adjustments listed in the Sentencing Guidelines. The plea agreement is attached to and made part of the presentence report.

5. The plea agreement has no effect on the guideline calculations.

Related Cases

6. None known.

The Offense Conduct

7. Information for the offense conduct section of the presentence report was obtained from the investigative report of Postal Inspector J. Warnock, and the interview with and written statement from the defendant.

8. According to J. Warnock, this investigation began after the U.S. Postal Inspection Service at Atlanta, Georgia, received numerous complaints from postal customers residing on Mr. Granderson's postal carrier route. These complaints were

about non-receipt of mail or mail being received in a rifled condition oftentimes void of cash contents.

9. On or about June 2, 1990, a greeting card addressed to Debra Lynch was received by the customer in a rifled condition and devoid of cash contents ($10).

10. On June 6, 1990, postal inspectors prepared a mailing addressed to Ms. Jackie Morris which included a greeting card and $20 in identifiable U.S. currency. An unattractive mailing was also prepared bearing the address of J. Morris which consisted of a postcard. On June 7, 1990, postal inspectors observed carrier Granderson as he sorted the mail for delivery and noticed that he set aside the Morris letter, not the postcard, in a separate section of his letter case. Granderson was also observed placing the Morris letter with five or six other letters and bundling them with a rubber band. Included in this bundle was a blue greeting card letter addressed to David and Karen McConnell. The McConnell address was not an address that was on Mr. Granderson's route and therefore should have been put in the "throwback case" to be re-sorted. While on his postal route, the defendant was under surveillance by postal inspectors. He delivered only the postcard to the Morris address, not the greeting card letter. Postal inspectors also went through the mail that Mr. Granderson brought in from customers' boxes that day and discovered the greeting card letter addressed to the McConnells (a non-existent address) had been opened.

11. On June 7, 1990, postal inspectors prepared another mailing. This mailing was addressed to Mrs. Teresa Campbell and included a greeting card and $10 of identifiable U.S. currency. An unattractive mailing was also prepared and addressed to Bill Campbell and included a postcard. On June 8, 1990, a postal inspector put the two mailings in carrier Granderson's "hot case" (case containing mail that was put into the throwback case and had been re-sorted and given back out to the carriers). Postal inspectors observed Granderson appropriately case the two Campbell letters. They also observed him handle the Morris letter from the previous day and remove it from the "markups" section of his mail tray. ("Markups" refer to mail not deliverable -- forwarding order expired, no such number, etc.) Since the Morris letter was properly addressed to a valid address, it should not have been in the "markup" section. Carrier Granderson pulled all his "markups" and placed all but the Morris letter into the throwback tray. He returned the Morris letter to a special section of his mail case for mail to be forwarded. Jackie Morris had never filed a change of address form or forwarding

order. The Postal Manager retrieved the Morris letter and found it had been opened and was devoid of the $20 cash contents. Carrier Granderson was under surveillance while on his delivery route. Postal inspectors discovered upon a check of the "Campbell" mailbox that the postcard was delivered but not the greeting card letter. Carrier Granderson returned to the Post Office and left again after casing his mail. While he was gone, a Postal Manager examined the mail around the defendant's carrier case. Granderson had left two bundles of mail on the case ledge and within one of those bundles, the Postal Manager found the Campbell greeting card, opened, with the money still inside. The Postal Manager retrieved the card. When Granderson returned, he asked the Postal Manager if anyone had removed mail from his case.

12. The same or similar method was used by the defendant in the other thefts. A summary of the thefts as listed in the Criminal Information is as follows:

1. Debra Lynch letter on June 2, 1990: Letter rifled with no money inside (there was supposed to be $10).

2. Ms. Jackie Morris test case on June 7, 1990: One card with $20 inside and one postcard. Both were retrieved with no money inside.

3. David & Karen McConnell letter on June 7, 1990: Letter rifled and no money inside.

4. Mrs. Teresa Campbell test case on June 7, 1990: One card with $10 inside and one postcard. Both were left at the Post Office, found opened with money inside.

5. Ms. Jackie Morris letter on or about June 9, 1990: Letter rifled, no money missing.

6. Debra Lynch test case on June 15, 1990: One greeting card and one letter were not delivered. The defendant kept the cards and $30.

7. Karen McConnell test case on June 15, 1990: Card and letter not delivered, missing $20.

8. David McConnell test case on June 20, 1990: Card and $10 not delivered, found on defendant when searched.

13. On June 20, 1990, postal inspectors confronted Granderson and escorted him to the Postal Manager's office where he was advised of his constitutional rights. Granderson voluntarily

signed a Warning and Waiver of Rights. He was advised of the mail theft investigation being conducted and asked what knowledge he had of the David McConnell letter. He stated he did not remember the letter but would have put it in the throwback case. Granderson voluntarily consented to a search of his person and the David McConnell letter was found in his right shoe.

14. Granderson then admitted to the theft and also to other thefts of mail by himself. He gave a sworn statement to the postal inspectors in which he admitted his heavy financial indebtedness was the reason for taking money from letters.

15. He also admitted taking letters "since about the first of the year 1990....to pay bills and buy groceries." Mr. Granderson stated, "I am very sorry for taking letters and money from letters and I only did it because I am heavily in debt and needed the money to pay bills. If possible, I would like to pay back money I have taken from letters and keep my job."

16. Mr. Granderson resigned from the U.S. Postal Service on June 20, 1990.

17. Three separate guidelines are referenced for statute 18 USC §1703. The Probation Officer determined that the guideline for 2B1.1 is most applicable. Guideline 2B1.3 refers to destruction of property. Guideline 2H3.3 refers to obstruction of correspondence and states that if the conduct involved was theft of mail, apply 2B1.1.

18. Under 2B1.1(a), the defendant's base offense level is 4. Under 2B1.1(b)(1)(A), there is no increase in levels for the amount of loss since the loss did not exceed $100.

19. Under 2B1.1(b)(5), the defendant's offense level is increased to 6 since the offense involved the theft of U.S. Mail.

20. The defendant's adjusted offense level is 6.

Victim Impact

21. Full restitution of $80 was made prior to the filing of the Criminal Information.

Role in the Offense

22. Under 3B1.3, the defendant is assessed a 2 level increase for his abuse of a position of trust. The commentary for this guideline states that "the position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons." Mr. Granderson, as a Postal Service mail carrier, was entrusted with the duty of delivering mail. Citizens do not expect their mail to be opened by others, much less, by persons entrusted with the duty of safely delivering their mail to them. The average person is not afforded the opportunity of going through mail casings and picking out cards or letters that appear to have money in them.

23. The defendant's adjusted offense level is 8.

23A. OBJECTION: The defendant objects to the assessment of a two level increase for abuse of a position of trust. The defendant states he was a mail carrier, and that position is no more a position of trust than one held by a bank teller, which the commentary to Guideline 3B1.3 specifically notes is not a position of trust.

23B. RESPONSE: The Probation Officer maintains the defendant should be given the two level increase for his abuse of a position of trust based on reasons given in paragraph 22.

Obstruction of Justice

24. The Probation Officer has no knowledge that the defendant impeded or obstructed justice.

Acceptance of Responsibility

25. The Probation Officer recommends that the defendant be given a 2 level reduction for his acceptance of responsibility under 3E1.1. Mr. Granderson admitted his guilt at the initial interview with the postal inspectors and has already made full restitution.

26. The defendant's total offense level is 6.

PART B - THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication

27. None.

Criminal Convictions

28. None.

Career Offender

29. Not applicable.

Other Criminal Conduct

30. Not applicable.

Pending Charges

31. None known.

PART C - OFFENDER CHARACTERISTICS

Family Ties and Responsibilities

32. Ralph Stuart Granderson, Jr. was born June 21, 1958, to the union of Ralph (age 66) and Marian (age 61) Granderson in Richmond, Virginia. He has one brother, one sister, and one stepsister from his mother's previous marriage. All of his family live in Richmond, Virginia.

33. The defendant described his home environment as normal in that there were no specific problems in his home. He claims no current religious affiliation though his mother advised that the defendant is a member of the Baptist church. Mrs. Granderson stated she still felt close to her son though they had an argument in December, 1990, and have not spoken since. She stated the defendant gets along with his brothers and sisters and that he can live in her home if he decides to move back to Richmond, Virginia. The defendant's father is a retired occupational therapist and his mother is a retired school custodian.

34. Mr. Granderson is not married and has no children. He currently rents a room at the home of a friend's parents and hopes to move back to Richmond, Virginia following his sentencing date.

Mental and Physical Health

35. The defendant stands 5'4" tall, weighs 150 pounds, has black hair, brown eyes, and a scar on the inside of his right arm. The defendant reports no mental or physical health problems either past or present and his mother confirmed that also.

Substance Abuse

36. The defendant was advised by his attorney not to discuss any substance abuse. The defendant's mother stated she was not aware of any illicit drug use by the defendant. She stated that the defendant does drink beer but she is not aware of any alcohol abuse.

Education and Vocational Skills

37. Mr. Granderson left high school in the eleventh grade to join the Army. He received his high school diploma while in the Army in 1978, and states he attended a one quarter computer course at Massey Business College in Atlanta, Georgia from October, 1983 to January, 1984.

Employment

Employment Status:

Employment at Time of Arrest: Employed.

Employment at Time of Sentencing: Employed.

Occupation: Car wash attendant.

Employment History:

38. September, 1990 to Present: Calibur Car Wash, Stone Mountain, Georgia. Employed as a car wash attendant making $4.50 per hour. His current boss reports that Mr. Granderson's work attendance is good and he is always at work when needed. He also states that Mr. Granderson is one of the most reliable men that he has working for him and works up to the standards that his company requires. His attitude toward customers and other employees is excellent and Mr. Granderson is considered a team leader in the car wash and handles his position professionally.

39. July, 1990 to September, 1990: ARC Security, Atlanta Airport, Atlanta, Georgia. Employed as a security guard making $4.50 per hour. The defendant states he left this job to go to work at the car wash.

40. From June, 1990 to July, 1990: Action Temporary Service, Atlanta, Georgia. The defendant states he worked on a communications technician assignment for one month making $5.00 per hour. At the same time, he delivered newspapers for

the Atlanta Journal-Constitution for three days but left this job because he "couldn't stay awake." Mr. Granderson left Action Temporary Services to go to work for ARC Security at the Atlanta Airport.

41. From December, 1984 to June, 1990: U.S. Post Office, Atlanta, Georgia. Employed as a mail carrier making $29,881 per year base salary. The defendant resigned from this position due to the instant offense.

42. From January, 1984 to February, 1985: Holiday Inn, Atlanta, Georgia. Employed as a dishwasher, then bellman, then front desk clerk, making $4.25 per hour. The defendant reports he worked full-time until hired by the U.S. Post Office. He continued to work at the Holiday Inn part-time (as a second job), until February, 1985.

43. From October, 1983 to January, 1984: United Parcel Service, Atlanta, Georgia. Employed in the shipping and packaging department as a temporary worker while in college making $9.00 per hour.

44. From May, 1983 to October, 1983: Unemployed and moved to Atlanta, Georgia from Richmond, Virginia. The defendant was still in the Army Reserves and received some income from the Army.

45. From May, 1980 to May, 1983, the defendant was enlisted full-time in the Army. The defendant obtained the rank of E-5 - Sergeant, received the Good Conduct medal and the Meritorious Service medal. He was discharged from the Army with an honorable discharge in May of 1983, and continued in the Army Reserves.

46. From November, 1979 to May, 1980: Miller and Rhodes Department Store, Richmond, Virginia. The defendant states he worked delivering furniture making minimum wage and left this job to go back into the Army full-time.

47. From November, 1976 to November, 1979, the defendant was enlisted full-time in the Army.

Financial Condition

48. The information for the financial section of the presentence report was obtained from the defendant's self-reporting, Credit Bureau report, and the Internal Revenue Service.

	ASSETS	
	Cash	-0-
	Unencumbered Assets	-0-
	Encumbered Assets	-0-
49.	TOTAL ASSETS	-0-
	LIABILITIES	
	Unsecured Debts	
	Credit accounts	$ 8,388.00
	Utility bills	96.00
	Past due apartment rent	384.00
	Health services	271.00
	GMAC (truck)*	17,000.00
	Secured Debts	-0-
50.	TOTAL LIABILITIES	$26,139.00
51.	NET WORTH	-$26,139.00
	MONTHLY CASH FLOW	
	Income	$ 450.00
52.	TOTAL INCOME	$ 450.00
	Necessary Living Expenses	
	Rent	$ 200.00
	Groceries	300.00
	Installment payments	315.00
	Transportation	50.00
53.	TOTAL EXPENSES	$ 865.00
54.	MONTHLY CASH FLOW	- $ 415.00

55. Internal Revenue Service records reflect the following adjusted gross incomes for Mr. Granderson for the years 1986 through 1989:

1989: $30,364
1988: $28,616
1987: $26,081
1986: $24,713

56. *The defendant voluntarily surrendered his truck to GMAC (financer) in August, 1990 because he could no longer make the payments. Once GMAC sells the truck, Mr. Granderson will be responsible for the balance owed on the loan. At present, GMAC has not sold the truck and Mr. Granderson owes $17,000 on the loan.

Analysis

57. The defendant is in poor financial shape and is in the process of filing a Chapter 13 bankruptcy. He does plan to receive $1,600 from his Thrift Savings Plan with the U.S. Postal Service, but this is minimal compared to what his current debts are.

58. Mr. Granderson should be able to pay a fine within the guideline range during a term of supervision.

Criminal Livelihood

59. Not applicable.

PART D - GUIDELINE APPLICATION

See Attached Guideline Worksheets.

WORKSHEET A (OFFENSE LEVEL)

1991 February 6th 03:55

Defendant GRANDERSON, RALPH

District/Office 3E
Docket Number 91- 1- 1
Date of Instant Offense 6/20/90

Group Number 1
Number of counts 1

U.S. Code Title & Section - 18.1703

1. OFFENSE LEVEL

Guideline	Description	Level
2B1.1(a)	Theft	4
	Specific Offense Characteristics	
(b)(1)	$ 100.00	+0
(b)(4)	Was undelivered U.S. mail taken? Yes.	+2
(b)(5)	Did the offense involve more than minimal planning? No.	+0
(b)(6)	Did the offense involve organized criminal activity? No.	+0
(b)(7)	Did offense jeopardize safety/soundness of financial institution? No.	+0
	Sum of Base Level and Specific Offense Characteristic Adjustments	6

2. Victim Related Adjustments

No Applicable Victim Related Adjustments

3. Role in the Offense Adjustments

3B1.3	- Abused position of trust or special skill	+2

4. Obstruction Adjustment +0

5. Reckless Endangerment Adjustment +0

6. Adjusted Offense Level 8

WORKSHEET B (MULTIPLE COUNTS OR STIPULATION TO ADDITIONAL OFFENSES)

1991 February 6th 03:55

Defendant GRANDERSON, RALPH

District/Office 3E
Docket Number 91- 1- 1
Date of Instant Offense 6/20/90

1.	Adjusted Offense Level for Group 1	8	1.0 units
2.	Total Units		1.0 units
3.	Increase in Offense Level Based on Total Units		0
4.	Highest of the Adjusted Offense Levels		8
5.	Combined Adjusted Offense Level		8

WORKSHEET D (GUIDELINE WORKSHEET)

1991 February 6th 03:55

Defendant GRANDERSON, RALPH

District/Office 3E
Docket Number 91- 1- 1
Date of Instant Offense 6/20/90

1. Adjusted Offense Level	8
2. Acceptance of Responsibility	-2
3. Offense Level Total	6
4. Criminal History Category	I
5. Career Offender/Armed Career Criminal/Criminal Livelihood	
a. Offense Level Total	6
b. Criminal History Category	N/A
6. Guideline Range from Sentencing Table	0 - 6

WORKSHEET D (CONTINUED)

7. Probation

a. Imposition of a Sentence of Probation

Minimum is zero--probation authorized

A. Length of Term of Probation

Offense Level is six or more--probation length is one to five year

B. Condition of Probation

Offense Level is six or more--probation length is one to five year

b. Conditions of Probation

(1) Confined to judic'l district
(2) Report to probation officer
(3) Truthfully answer questions
(4) Support dependants
(5) Work at lawful occupation
(6) Report change of residence
(7) Restrict'ns on alcohol/drugs
(8) Avoid places where drugs sold
(9) Avoid criminal associates
(10) Allow visits by probation officer
(11) Report all police contacts
(12) Consent needed to act as informer
(13) Notify third parties
(21) Community service
(22) Occupational restrictions
(23) Substance abuse programs

8. Sentence under 5C1.1 (c)(3) and (d)(2)

Minimum is zero--intermediate sentence not authorized

9. Supervised Release

a. Imposition and Length of a Term of Supervised Release
24 to 36 Months (see 5D1.1, 5D1.2)

b. Conditions of Supervised Release (see 5D1.3)

WORKSHEET D (CONTINUED) E

10. Restitution remaining to be paid:			$ 0.00
Restitution already paid:			$ 80.00
11. Fines			
	Minimum		Maximum
1. Statutory Maximum of any single count in excess of $250000			$ 0.00
2. Fine Table	$ 500.00		$ 5000.00
3. Defendants Gain less Restitution	$ 0.00		
4. Gain to all Participants (x3)			$ 240.00
5. Victim's loss (x2)			$ 160.00
6. Guideline range	$ 500.00		$ 5000.00
7. Cost of Imprisonment	$ 1415.00	X 12	$ 16980.00
Cost of Probation/Special Parole			$ 1160.00
Cost of Community Confinement			$ 11487.00
12. Special Assessments (see 5E1.3)			$ 50.00
13. Departures Applicable for the Unusual Cases			

SENTENCING OPTIONS

DEFENDANT:	RALPH STUART GRANDERSON, JR.
OFFENSE:	Count 1: Delay or Destruction of Mail, 18 USC §1703(a), a Class D Felony
PLEA/VERDICT:	Negotiated Plea of Guilty before Judge O'Kelley on January 11, 1991

SENTENCING OPTIONS:

Statutory Penalty:	5 years/$250,000 fine
Total Offense Level:	6
Criminal History Category:	I
Custody Guideline Range:	0 - 6 months
Fine Guideline Range:	$500 - $5,000
Restitution:	Already paid
Special Assessment:	$50
Cost of Imprisonment\Supervision:	$16,986.72/$1,160 yearly
Probation Option:	Yes, 1 to 5 years
Supervised Release:	2 to 3 years

UNRESOLVED GUIDELINE ISSUES:

1. Abuse of Position of Trust.

Respectfully submitted,

Rachel A. Scott

Rachel A. Scott
U. S. Probation Officer

I have reviewed the presentence report and agree with its findings of fact, conclusions of law and sentencing recommendations; and state that to the best of my knowledge, the findings of fact, conclusions of law and sentencing recommendations of this report are not inconsistent with any other presentence report in this case.

Riley W. Erwin

Riley W. Erwin
Supervising United States
Probation Officer

RAS/rh

ADDENDUM TO PRESENTENCE REPORT

United States vs. Granderson, Ralph Stuart, Jr., Docket No. 1:91-CR-01-01
U. S. District Court, Northern District of Georgia

The Probation Officer certifies that the Presentence Report, including any revision thereof, has been disclosed to the defendant, his attorney, and the counsel for the Government, and that the content of the Addendum has been communicated to counsel.

OBJECTIONS

By the Government

The Government has filed one objection not effecting the guideline calculations. The objection refers to an incorrect statement in paragraph 12, item 7, where the report states $10 was missing from the McConnell letter. The correct amount of missing currency is $20.

The Probation Officer notes the error and has corrected the report to read $20. Also, in paragraph 21, the correct amount of restitution paid by the defendant was noted as $70 and should be $80. That also has been corrected in the report.

By the Defendant

The defendant, through his counsel, has submitted one objection which would have an effect on the guideline calculations.

1. Abuse of position of trust -- addressed following paragraph 23.

Objections not having an effect on the guideline calculations:

1. The defendant believes the details described in paragraphs 8 through 11 overstate the seriousness of the offense and that paragraph 12 best summarizes the total offense conduct.

2. The defendant submits that Guideline 2H3.3 should apply in that the Government agreed to that at the time the defendant waived indictment.

The Probation Officer determined that 2H3.3(b)(2) was applicable with the resulting offense level (using 2B1.1) of 6. The defendant states that 2H3.3(b)(3) is applicable with a resulting offense level (using 2B1.3) of 6.

3. The defendant wishes to clarify his comment in paragraph 40 where he stated he quit his job at the Atlanta Journal-Constitution because "he couldn't stay awake". The defendant feels that statement might be erroneously viewed as evidence of laziness when, in fact, the job entailed pre-dawn driving and he quit in large part because of legitimate safety concerns.

4. The defendant objects to the conclusion in paragraph 58 that he could pay a fine at the low end of the guideline range.

5. The defendant objects to the worksheet D, possible special conditions of community service, occupational restrictions, and substance abuse programs.

Respectfully submitted,

Rachel A. Scott

Rachel A. Scott
U. S. Probation Officer

Reviewed and Approved:

Riley W. Erwin

Riley W. Erwin
Supervising U.S. Probation Officer

APPENDIX B

PROB 12

UNITED STATES DISTRICT COURT
for
THE NORTHERN DISTRICT OF GEORGIA

U.S.A. vs. Ralph Granderson Docket No. 1:91-CR-01-01

Petition on Probation and Supervised Release

COMES NOW James G. Heflin, Jr. PROBATION OFFICER OF THE COURT presenting an official report upon the conduct and attitude of probationer Ralph Granderson who was placed on probation by the Honorable William C. O'Kelley sitting in the court at Atlanta, on the 18th day of March, 1991, who fixed the period of probation supervision at five years, and imposed the general terms and conditions of probation theretofore adopted by the court and also imposed special conditions and terms as follows:

The defendant is prohibited from possessing a firearm or other dangerous weapon.

The defendant shall participate, if any time being necessary and required to do so, in any program approved by the U. S. Probation Office for substance abuse, which may include testing to determine whether the defendant has reverted to the use of alcohol or drugs.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

Probationer has possessed/used drugs in that on 5-10-91 and 6-7-91, Probationer rendered urine samples which tested positive for cocaine metabolite.

PRAYING THAT THE COURT WILL ORDER Ralph Granderson to appear in Court in Atlanta, Georgia, in Courtroom 1906, 75 Spring Street, S.W., on July 29, 1991, at 10:30 A.M. to show cause why his probation should not be revoked.

ORDER OF COURT

Considered and ordered this 19th day of July 1991 and made a part of the records in the above case.

William C. O'Kelley

William C. O'Kelley
United States District Judge

Respectfully,

James G. Heflin, Jr.

James G. Heflin, Jr.
United States Probation Officer
Atlanta, Georgia

Date: June 28, 1991

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	CRIMINAL ACTION
VS.	)	
	)	NUMBER 1:91-CR-1-WCO
RALPH STUART GRANDERSON	)	

* * *

TRANSCRIPT OF REVOCATION OF PROBATION BEFORE THE HONORABLE WILLIAM C. O'KELLEY, CHIEF UNITED STATES DISTRICT JUDGE, ON MONDAY, JULY 29, 1991, IN COURTROOM 1906, NINETEENTH FLOOR, UNITED STATES COURTHOUSE, IN ATLANTA, FULTON COUNTY, GEORGIA, IN THE ABOVE-STYLED ACTION.

* * *

APPEARANCES OF COUNSEL:

FOR THE UNITED STATES: JANET KING

FOR THE DEFENDANT: GREGORY SMITH

* * *

DENNIS J. REIDY
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
1949 U. S. DISTRICT COURTHOUSE
75 SPRING STREET, S.W.
ATLANTA, GEORGIA 30303
(404) 331-3724

(IN ATLANTA, FULTON COUNTY, GEORGIA; MONDAY, JULY 29, 1991; 10:30 A.M.; IN OPEN COURT.)

THE COURT: IS GRANDERSON IN CUSTODY?

MR. SMITH: NO. HE'S OUT HERE.

THE COURT: ALL RIGHT.

THE CLERK: CALL THE CASE UNITED STATES OF AMERICA VERSUS RALPH GRANDERSON, CRIMINAL NUMBER 1:91-01. IS THE GOVERNMENT READY?

MS. KING: THE GOVERNMENT'S READY, YOUR HONOR.

THE COURT: MR. SMITH, ARE YOU READY? YOU'VE GOT THIS ONE ALSO?

MR. SMITH: YES, YOUR HONOR.

THE COURT: ALL RIGHT. ALL RIGHT, HAVE YOU RECEIVED A COPY OF THE GOVERNMENT'S APPLICATION FOR PROBATION REVOCATION IN THIS CASE?

MR. SMITH: YES, YOUR HONOR.

THE COURT: HOW DO YOU RESPOND TO IT?

MR. SMITH: YOUR HONOR, WE ADMIT THE CHARGE.

THE COURT: YOU ADMIT THE CHARGES?

MR. SMITH: YES, YOUR HONOR.

THE COURT: ALL RIGHT. MR. GRANDERSON, IS THERE ANY REASON THAT THE COURT SHOULD NOT REVOKE THE PROBATION IN THIS CASE?

OR IS THERE ANY REASON YOU WISH TO STATE, MR. SMITH?

MR. SMITH: I'M SORRY. JUST ONE MINUTE.

YOUR HONOR, I THINK THAT THE POINTS WE WOULD WANT TO MAKE ARE THESE. AS YOUR HONOR MAY KNOW, WE BELIEVE THE COURT HAS DISCRETION TO IMPOSE A SENTENCE IN THIS CASE. AS I UNDERSTAND IT -- I GUESS MAYBE I SHOULD START WITH ASKING WHAT THE GOVERNMENT INTENDS TO SEEK IN THIS CASE.

MS. KING: YOUR HONOR, THE GOVERNMENT'S POSITION IS THAT AS PLED BY THE PETITION FOR REVOCATION, THAT THE DEFENDANT HAS POSSESSED OR THE PROBATIONER HAS POSSESSED AND USED DRUGS. IF THE COURT MAKES THAT FINDING, THERE IS A MANDATORY REVOCATION UNDER 3565 SUBSECTION (A), THAT THE COURT WOULD HAVE TO REVOKE AND IMPOSE AT LEAST ONE-THIRD OF THE FIVE-YEAR ORIGINAL SENTENCE. THEREFORE, THAT WOULD BE THE COURT'S POSITION -- THE GOVERNMENT'S POSITION, EXCUSE ME -- THAT THE COURT UNDER THESE FACTS MUST REVOKE UNDER THE STATUTE AND IMPOSE NOT LESS THAN 20 MONTHS.

MR. SMITH: YOUR HONOR, PERHAPS I SHOULD CLARIFY THE ADMISSION THEN. MR. GRANDERSON ADMITS USE OF DRUGS BUT DOES NOT ADMIT POSSESSION IN THE TERMS THAT THE GOVERNMENT HAS INDICATED, AND I BELIEVE THAT IN CIRCUMSTANCES WHERE THE USE IS INDICATED FROM THE DRUG TESTING, WHICH IT WAS HERE, THE COURT HAS THE DISCRETION NOT TO IMPOSE THE MANDATORY ONE-THIRD, AND THAT'S WHAT WE WOULD ASK THE COURT TO DO HERE.

IF THE COURT MAY RECALL, MR. GRANDERSON HAS NO PRIOR CRIMINAL HISTORY AT ALL EXCEPT FOR THE UNDERLYING OFFENSE, WHICH DID NOT RELATE TO DRUGS AT ALL. IT WAS MAIL THEFT. DURING THE

PRETRIAL SERVICES' REPORT MR. GRANDERSON WAS OUT ON BOND FOR A SUBSTANTIAL PERIOD OF TIME, HAD NO PROBLEMS WHATSOEVER, WAS DRUG TESTED PERIODICALLY DURING THAT TIME, NEVER TESTED POSITIVE AT ALL. NO INDICATION HE'S EVER HAD ANY DRUG PROBLEMS. THIS RELATED TO A MISTAKE HE MADE IN TERMS OF GETTING I GUESS IN A SORT OF PARTY SETTING AND DOING SOMETHING HE SHOULDN'T HAVE, BUT WE SUBMIT THAT 20 MONTHS WOULD BE UNDULY HARSH, GIVEN HIS BACKGROUND AND THE CIRCUMSTANCES, AND WE WOULD ASK THE COURT THAT THE COURT IMPOSE A SENTENCE BELOW THE 20 MONTHS REQUESTED BY THE GOVERNMENT.

IN THE CASE OF UNITED STATES VERSUS SMITH, WHICH IS AN ELEVENTH CIRCUIT CASE FROM LAST YEAR, 907 F. 2D 133, THE COURT TALKS ABOUT WAYS TO DO REVOCATION UNDER THE GUIDELINES. THIS WAS BEFORE THE NEW GUIDELINE HAD BEEN IMPLEMENTED WHICH SAID WHERE WITHIN THE RANGE THE COURT OUGHT TO IMPOSE SENTENCE, AND THE SMITH CASE SAID THAT THE COURT SHOULD GO BACK TO THE ORIGINAL SENTENCING RANGE, WHICH IN THIS CASE WOULD BE ZERO TO SIX MONTHS, AND IMPOSE A SENTENCE WITHIN THAT RANGE. I THINK THAT THE SMITH CASE MAY NOT BE APPLICABLE NOW THAT THE GUIDELINES HAVE INDICATED SPECIFIC REVOCATION GUIDELINES AS WELL, BUT NEVERTHELESS AT LEAST UNDER SMITH THE COURT AT THAT TIME PERHAPS COULD HAVE BEEN LIMITED TO THE ZERO TO SIX MONTH RANGE.

BECAUSE HE'S A CRIMINAL HISTORY CATEGORY 1, I WOULD ALSO NOTE TO THE COURT THAT BUT FOR THE MANDATORY REVOCATION, ASSUMING THAT THIS WOULD BE A GRADE (C) VIOLATION, A TECHNICAL

VIOLATION -- AT LEAST IN TERMS OF PAROLE REVOCATION, DRUG USE IS A TECHNICAL VIOLATION -- HIS RANGE WOULD BE THREE TO NINE MONTHS. SO, AGAIN, YOUR HONOR, WE'RE TALKING ABOUT RANGES WELL BELOW THE 20 MONTHS THAT THE GOVERNMENT'S SEEKING IN THIS CASE.

WE SUBMIT THAT THE COURT, GIVEN MR. GRANDERSON'S GOOD BACKGROUND -- HE'S BEEN A HARD-WORKING FELLOW FOR A LONG TIME AND HE'S NEVER BEEN IN TROUBLE BEFORE IN HIS LIFE UNTIL THIS UNDERLYING OFFENSE AND VIOLATION. HE'S NOT PARTICULARLY A YOUNG MAN EITHER, SO HE'S LED A GOOD LIFE FOR A SUBSTANTIAL PERIOD OF TIME. WE ASK THE COURT TO EXERCISE ITS DISCRETION, TO FIND THAT THE USE WAS DEMONSTRATED BY MR. GRANDERSON'S DRUG TESTING ONLY AND EXERCISE ITS DISCRETION TO GO BELOW THE 20 MONTHS AND IMPOSE A SENTENCE THAT MIGHT BE MORE APPROPRIATE IN THIS CASE. HE'S NEVER BEEN TO PRISON, AND WE SUBMIT THAT 20 MONTHS IS A SUBSTANTIAL PERIOD OF TIME FOR A DRUG TEST.

MS. KING: YOUR HONOR, THE GOVERNMENT'S POSITION IS THAT THERE'S NO WAY THAT MR. GRANDERSON USED THE DRUGS UNLESS HE POSSESSED THEM AND THAT IT WOULD BE APPROPRIATE FOR THE COURT TO FIND THAT HE WAS IN POSSESSION OF THE DRUG, IN VIOLATION OF THE GUIDELINES AND IN VIOLATION OF THE STATUTE, AND SHOULD THEREFORE APPLY THE MANDATORY REVOCATION.

FOR THE RECORD, I'D LIKE THE COURT TO NOTE THAT THE GOVERNMENT'S POSITION IS THAT ACCORDING TO OUR REVIEW OF THE SMITH DECISION AND DISCUSSIONS WITH THE DEPARTMENT OF JUSTICE, WOULD BE THAT THE COURT WOULD HAVE TO ABIDE BY UNITED STATES

VERSUS SMITH IF YOU DO NOT FIND A MANDATORY REVOCATION AND THEREFORE THE SENTENCE WOULD HAVE TO BE IMPOSED WITHIN THE ORIGINAL GUIDELINE RANGE OF ZERO TO SIX MONTHS. IF THE COURT FELT THAT THAT WAS NOT APPROPRIATE, I DID WANT TO LET THE COURT KNOW THAT I SPOKE WITH MR. HEFLIN, AND THE PROBATION OFFICE'S FIGURES THAT THEY PROVIDED TO YOU UNDER CHAPTER 7 OF 12 TO 18 MONTHS OF REVOCATION ARE INCORRECT. THEY HAD FIGURED THAT THE POSSESSION OR THE USAGE OF THE COCAINE WOULD BE A FELONY. OF COURSE, AS THE COURT'S AWARE, THAT'S ONLY A MISDEMEANOR. SO, THE CHAPTER 7 GUIDELINES ARE THREE TO NINE MONTHS, AS MR. SMITH NOTED.

THEREFORE, THE THREE POSSIBILITIES IN THIS CASE ARE THAT THE COURT WOULD FIND THAT THE USE OF THE DRUGS AS ADMITTED BY THE DEFENDANT CONSTITUTED POSSESSION AND REVOKE FOR THE 20 MONTHS OR APPLY SMITH. THAT WOULD BE -- THE ZERO TO SIX MONTHS WOULD BE THE RANGE, UNLESS THE COURT FELT THAT SMITH WAS NOT BINDING ON YOU, AND YOU WOULD APPLY CHAPTER 7, WHICH WOULD BE THREE TO NINE MONTHS.

THE COURT: JUST A MINUTE. LET ME REVIEW SOMETHING.

MS. KING: ALL RIGHT, SIR.

THE COURT: I'M NOT SURE THAT I AGREE WITH THE INTERPRETATION OF THE MANDATORY REVOCATION AND SENTENCE TO AT LEAST ONE-THIRD OF THE ORIGINAL SENTENCE. I DON'T QUARREL WITH THAT PRINCIPLE OF LAW. THE QUESTION IS: WHAT WAS THE ORIGINAL SENTENCE? IN THIS CASE THERE WAS NO ORIGINAL SENTENCE TO JAIL.

HAS THAT BEEN INTERPRETED TO BE THE MINIMUM SENTENCE --

MS. KING: NO, YOUR HONOR.

THE COURT: -- AUTHORIZED BY STATUTE, WHICH WAS FIVE YEARS?

MS. KING: YOUR HONOR, IF THE COURT -- LET ME SEE IF I CAN FIND IT. THERE IS NO LONGER UNDER THE GUIDELINES WHERE THE COURT SUSPENDS IMPOSITION OF SENTENCE.

THE COURT: I REALIZE THAT. THAT WAS THE OLD WAY OF DOING IT.

MS. KING: RIGHT. FIVE YEARS WAS THE SENTENCE. THE COURT ALLOWED IT TO BE SERVED ON PROBATION. IT IS THE GOVERNMENT'S POSITION THAT THE ORIGINAL PROBATION PERIOD OF FIVE YEARS WAS THE ORIGINAL SENTENCE, AND I'LL REFER THE COURT TO SECTION 3561 OF TITLE 18 THAT INDICATES THAT A PERIOD OF PROBATION CONSTITUTES A SENTENCE. GUIDELINE SECTION 7A2, LITTLE (A), PROVIDES THAT A PERIOD OF PROBATION UNDER THE GUIDELINES IS A SENTENCE. THEREFORE, IN INTERPRETING 3565, THE GOVERNMENT'S POSITION WOULD BE THAT THE PROBATED SENTENCE THAT THE COURT GAVE IS THE ORIGINAL SENTENCE THAT IS REFERRED TO IN THE REVOCATION LANGUAGE, A PERIOD OF PROBATION. IT'S VERY HARD AND I HAD DIFFICULTY CONCEPTUALIZING PROBATION AS THE SENTENCE, BUT THAT IS THE INTERPRETATION.

THE COURT: WELL, THAT'S BEEN THE CONCEPT IN THE STATE COURT SYSTEM IN THE PAST, SO I DON'T HAVE MUCH TROUBLE UNDERSTANDING IT. I DON'T LIKE THE ANALYSIS, BUT I DON'T HAVE

ANY PROBLEM UNDERSTANDING THAT'S WHAT THEY'RE SAYING. THAT'S THE WAY I THINK THE STATE COURT SENTENCES HAVE OPERATED FOR YEARS; THAT WHATEVER THE PROBATIONARY TERM WAS, THAT WAS THE SENTENCE, I BELIEVE. THAT AGAIN IS WHERE WE'VE GOTTEN AWAY FROM THE TRADITIONAL OLD FEDERAL SYSTEM, WHICH I THOUGHT WAS A FAIRER, MORE PROGRESSIVE SYSTEM, BECAUSE FRANKLY HAD I BEEN GOING TO SENTENCE HIM TO JAIL, I WOULDN'T HAVE SENTENCED HIM TO FIVE YEARS. SO, I GIVE HIM A BREAK AND SENTENCE HIM TO FIVE YEARS PROBATION, AND NOW WHEN HE VIOLATES IT HE'S SUBJECTED TO FOUR TIMES WHAT HE WOULD HAVE BEEN -- WELL, MORE THAN THAT REALLY. 10 TIMES. HE'S SUBJECTED UP TO FIVE YEARS, 60 MONTHS; WHEREAS, OTHERWISE HE WOULD HAVE BEEN SUBJECTED ONLY TO SIX MONTHS. SO IT'S 10 TIMES AS MUCH. THERE'S JUST SOMETHING WRONG WITH THAT, BUT THERE'S A LOT WRONG WITH THE GUIDELINES. I WILL RETIRE FROM THIS COURT BEFORE ANYBODY EVER CONVINCES ME THAT THEY'RE FAIR.

MR. SMITH: WELL, IN THIS CASE, YOUR HONOR, I THINK THE GUIDELINES GIVE THE COURT AN OUT. IN APPLICATION NOTE 5 TO 7B1.4, AFTER CITING THE STATUTORY PROVISIONS ABOUT THE MANDATORY ONE-THIRD, IT STATES AS FOLLOWS: THE COMMISSION LEAVES TO THE COURT THE DETERMINATION OF WHETHER EVIDENCE OF DRUG USAGE ESTABLISHED SOLELY BY LABORATORY ANALYSIS CONSTITUTES, QUOTE, POSSESSION OF A CONTROLLED SUBSTANCE, END QUOTE, AS SET FORTH IN THE STATUTES. AND, YOUR HONOR, WHILE IT MAY --

THE COURT: I HAVE DIFFICULTY WITH THAT AND THAT'S THE SAME WAY THE COMMISSION -- YOU KNOW, THEY COMPROMISE THEIR

PRINCIPLES. I'VE HEARD THOSE COMMISSIONERS SAY, "OH, YOU'RE NOT BOUND BY THESE GUIDELINES. YOU CAN DEPART WHENEVER YOU WANT TO." WELL, THAT'S NOT WHAT THEY SAY AND THAT'S NOT WHAT THE LAW SAYS AND I'VE NOT DONE THAT. THEY'VE WRITTEN THEM ONE WAY AND THEN THEY TELL US SOMETHING DIFFERENT AND I DON'T AGREE WITH THEM. EVEN THOUGH I DON'T LIKE THE GUIDELINES, I INTEND TO APPLY THEM AS I UNDERSTAND THEM AS BEST I CAN. NOW, WHAT YOU'RE SAYING HERE IS THEY HAVE SAID THIS IS THE GUIDELINE, BUT IF YOU'RE WILLING TO COMPROMISE YOUR FINDINGS -- AND THAT'S IN EFFECT WHAT YOU'RE DOING IN MY JUDGMENT. IF YOU'VE TAKEN DRUGS AND YOU HAVE IT IN YOUR SYSTEM, THEN YOU'VE POSSESSED THOSE DRUGS. THEY'RE SAYING, "WELL, YOU CAN FIND DIFFERENTLY." WELL, I HAVE DIFFICULTY WITH THAT.

MR. SMITH: I UNDERSTAND THE COURT'S FEELING. I GUESS MY THOUGHT IS AS TO WHY THE COMMISSION DID THAT IS THIS: IT'S A POLICY DETERMINATION. I THINK FINDING SOMEONE IN POSSESSION IS ACTUALLY VIEWED AS WORSE THAN ACTUALLY HAVING THEM AND USED IT; AND WHAT WAS IT THAT CONGRESS MEANT WHEN THEY SAID POSSESSION OF A CONTROLLED SUBSTANCE? IF YOU FIND SOMEBODY IN POSSESSION, WELL, THEY MIGHT BE DISTRIBUTING.

THE COURT: NO. THE DIFFERENCE WITH THAT IS POSSESSION WITH THE INTENT TO DISTRIBUTE AND POSSESSION. POSSESSION IS POSSESSION.

MR. SMITH: WELL, I UNDERSTAND, BUT FINDING POSSESSION ALWAYS CARRIES WITH IT A POSSIBILITY OF DISTRIBUTION, WHETHER

THEY CAN PROVE THAT OR NOT. AND I GUESS WHAT I'M SAYING IS MERE USAGE THROUGH A DRUG TEST, THAT HAS ALREADY BEEN INGESTED AND THERE'S NO POTENTIAL EVEN THAT THAT CAN HURT SOMEONE. AND SO I GUESS WHAT I'M SAYING IS THE COMMISSION FELT LIKE RATHER THAN ASSUMING THAT USAGE ALWAYS WAS AS EVIL AS POSSESSION, THAT THEY LEAVE IT TO THE COURT TO DETERMINE IN THE PARTICULAR CASE.

THE COURT: WELL, I THINK USAGE IS PRETTY BAD, FRANKLY.

MR. SMITH: I UNDERSTAND.

THE COURT: IF WE DIDN'T HAVE THE USAGE, WE WOULDN'T HAVE THE DEALING IN.

MR. SMITH: WELL, I UNDERSTAND, BUT IN TERMS OF THE --

THE COURT: SO, I DON'T HAVE ANY PROBLEM WITH DEALING WITH USERS, BECAUSE WHEN PEOPLE QUIT USING IT, THERE WON'T BE A MARKET FOR IT.

MR. SMITH: WELL, I UNDERSTAND THAT, BUT IN TERMS OF THE ONE-THIRD REVOCATION, HE'S CLEARLY GOING TO GET REVOKED HERE. I MEAN, THAT'S WHY WE'RE HERE.

THE COURT: THAT'S RIGHT.

MR. SMITH: BUT THE ISSUE IS WHETHER THE USAGE IS AS EVIL AS THE POSSESSION WHERE THERE SHOULD ALWAYS BE A MANDATORY ONE-THIRD REVOCATION, AND I SUBMIT THAT IT'S UP TO THE COURT IN THIS CASE, AND THE COMMISSION EXPRESSLY SAYS THAT DETERMINATION'S UP TO THE COURT. SO, I DON'T THINK IT'S DOING VIOLATION TO THE GUIDELINES FOR THE COURT TO FIND THAT WAY. IN THIS CASE WHERE YOU'VE GOT A GUY WHO HAS WORKED HARD ALL HIS LIFE AND HAS NEVER

BEEN TO PRISON, I DON'T THINK 20 MONTHS IS NECESSARY TO TEACH HIM HIS LESSON AT ALL. AND AS THE COURT NOTES, THE MAXIMUM HE WOULD HAVE GOTTEN WOULD HAVE BEEN SIX MONTHS.

THE COURT: WOULD HAVE BEEN SIX MONTHS UNDER THE GUIDELINES..

MR. SMITH: EXACTLY.

THE COURT: AND I DON'T HAVE A BIT OF PROBLEM WITH, YOU KNOW, IF YOU HAD AN OPPORTUNITY TO GET SIX MONTHS AND YOU DIDN'T, BUT YOU GO OUT THERE AND YOU DON'T KEEP YOUR NOSE CLEAN, THEN YOU CAN GET MORE THAN THAT. I DON'T HAVE A PROBLEM WITH THAT. BUT 10 TIMES MORE OR A MANDATORY FOUR TIMES MORE --

MR. SMITH: YES, YOUR HONOR.

THE COURT: -- IS A LITTLE HARSH. BUT THAT'S WHAT YOU GET INTO WHEN YOU START DEALING WITH STATISTICS AND MATHEMATICS INSTEAD OF HUMAN BEINGS.

WHAT IS THAT SECTION AGAIN? LET ME READ IT.

MS. KING: THE STATUTORY SECTION, YOUR HONOR --

THE COURT: YES.

MS. KING: -- OR THE GUIDELINE SECTION?

THE COURT: WELL, BOTH, I GUESS.

MS. KING: IT'S 3565 OF TITLE 18.

THE COURT: 35 --

MR. SMITH: 65(A).

MS. KING: (A), TITLE 18.

THE COURT: WELL, I THINK CONGRESS HAS SPOKEN. I DON'T

KNOW THAT I HAVE ANY CHOICE IN IT, MR. SMITH.

MR. SMITH: IF THE COURT WOULD LOOK AT APPLICATION NOTE 5.

THE COURT: OF THE GUIDELINES?

MR. SMITH: OF THE COMMENTARY.

THE COURT: OF THE GUIDELINES, YOU MEAN?

MR. SMITH: YES, YOUR HONOR.

THE COURT: I DON'T THINK THE GUIDELINES CAN AMEND THE STATUTORY PROVISION.

MR. SMITH: I AGREE WITH THAT, YOUR HONOR, BUT THE GUIDELINES SAY THAT THE DEFINITION OF POSSESSION IS AN OPEN QUESTION AS TO WHETHER POSSESSION ALWAYS EQUALS USE FOR PURPOSES OF THE MANDATORY ONE-THIRD. THEY EXPLICITLY SAY THAT -- AND I THINK IT IS AN ADMINISTRATIVE AGENCY INTERPRETING THE STATUTE -- THEIR INTERPRETATION SHOULD BE GIVEN SOME DEFERENCE BY THE COURT. IT CLAIMS THAT IT'S AN OPEN QUESTION WITH THE COURT AS TO WHETHER USE HAS TO CONSTITUTE POSSESSION.

THE COURT: IT IS, IT'S AN OPEN QUESTION, AND THIS COURT I THINK HAS ALREADY DECIDED IN OTHER CASES AND WILL DECIDE HERE THAT THERE'S NO WAY THAT YOU CAN INGEST IT WITHOUT POSSESSING IT.

MR. SMITH: WELL, YOUR HONOR, IF SOMEONE MIXED SOMETHING IN A DRINK AND YOU --

THE COURT: INVOLUNTARILY GAVE IT TO YOU. IN THAT INSTANCE I THINK THAT WOULD BE A LEGAL DEFENSE AND YOU SHOULDN'T

ADMIT, YOU KNOW, THE OFFENSE. I THINK THAT WOULD BE AN INVOLUNTARY POSSESSION OF IT, AND AS FAR AS I'M CONCERNED, IT WOULDN'T CONSTITUTE A CRIMINAL ACT, PERIOD. AND I WOULDN'T REVOKE THE PROBATION UNDER ANY CIRCUMSTANCES IF SOMEONE HAD DROPPED HIM A MICKEY, IF THAT'S WHAT YOU'RE SAYING.

MR. SMITH: WELL, IT'S AWFULLY DIFFICULT TO PROVE THAT, YOUR HONOR, AND I GUESS THOSE CONSIDERATIONS COME INTO PLAY AS WELL. THE COURT WOULD HAVE DIFFICULTY BELIEVING SOMEONE INVOLUNTARILY --

THE COURT: PROBABLY WOULD, BUT IF THAT'S WHAT HAPPENED -- BUT IN ABSENCE OF THAT HAPPENING, THERE HAS TO BE POSSESSION AS FAR AS I'M CONCERNED.

MR. SMITH: THE POLICY ARGUMENT THAT POSSESSION WOULD CARRY WITH IT OTHER POSSIBILITIES THAT USE WOULDN'T I GUESS IS NOT PERSUASIVE WITH THE COURT.

THE COURT: NOT TO ME. IF CONGRESS WANTED THAT, THEY SHOULD HAVE SAID IT. THEY'VE MADE DISTINCTIONS IN THEIR DRUG STATUTES BY DISTINGUISHING SIMPLE POSSESSION FROM POSSESSION WITH INTENT TO DISTRIBUTE, AND IF THEY WANTED TO DISTINGUISH IN THIS PARTICULAR STATUTE ANYTHING OTHER THAN POSSESSION, THEY SHOULD HAVE DONE SO. NOW, I DON'T LIKE WHAT THEY DID, BUT THERE ARE A LOT OF THINGS CONGRESS DOES I DON'T LIKE, A LOT OF THINGS.

MR. SMITH: YES, YOUR HONOR.

THE COURT: BUT I STILL ENDEAVOR IN MY OWN CONDUCT BOTH TO OBEY WHAT THEY DO AND IN MY PROFESSIONAL LIFE TO IMPLEMENT

WHAT THEY SAY, WHETHER I LIKE IT OR NOT.

MR. SMITH: WELL, THAT'S WHAT MAKES YOU A GOOD JUDGE, THAT YOU DON'T LEGISLATE, AND I UNDERSTAND THAT. I GUESS MY ONLY THOUGHT WAS THAT IF CONGRESS REALLY MEANT THIS AS CLEAR AS THE COURT FEELS, THEY COULD HAVE WRITTEN IN "DRUG USAGE." THEY DID NOT. THEY WROTE SIMPLY "POSSESSION," AND I THINK THAT FOR THAT REASON IT'S OPEN WITH THE COURT. IT WOULD HAVE BEEN VERY EASY FOR THEM TO DO THAT.

THE COURT: THAT'S RIGHT, BUT THEY DIDN'T, BECAUSE MY VIEW IS THAT DRUG USAGE IS CONSIDERED DRUG POSSESSION. THEY DIDN'T NEED TO. I MEAN, IF YOU USE IT, YOU HAVE TO POSSESS IT. THERE'S NO WAY YOU CAN USE IT WITHOUT POSSESSING IT. EVEN IF THAT POSSESSION IS JUST MOMENTARILY FOR THE MINUTE OR THE FEW SECONDS THAT IT TAKES TO TAKE IT FROM SOMEONE ELSE AND TO INGEST IT, WHETHER IT'S DONE BY WHATEVER THE VARIOUS MEANS ARE: WITH NEEDLE, INTRAVENOUSLY, ORALLY OR NASALLY, AND I GUESS THERE ARE OTHER WAYS. I DON'T KNOW. BUT I'VE HEARD TESTIMONY AS TO THOSE THREE WAYS.

MR. SMITH: YES, YOUR HONOR. I GUESS THE ONLY OTHER POINT I MIGHT MAKE IS THAT EVEN IF HE WERE TO BE CONVICTED OF A POSSESSION, SIMPLE POSSESSION, IT WOULD BE, AS THE COURT KNOWS, A MISDEMEANOR WITH A MAXIMUM OF A YEAR.

THE COURT: AND I HAVE DIFFICULTY UNDERSTANDING -- WELL, OF COURSE, HE'S NOT BEING SENTENCED FOR THE VIOLATION SUPPOSEDLY. HE'S BEING SENTENCED FOR THE ORIGINAL OFFENSE. AND

THIS IS HIGHLY INCONSISTENT. I HAVE DIFFICULTY WITH IT, MR. SMITH, AND YOU OBVIOUSLY KNOW I DO AND YOU'RE PERSISTING TO TRY TO CONVINCE THE COURT DIFFERENTLY.

I HAVE REAL DIFFICULTY WITH IT. I THINK IT'S JUST ANOTHER ONE OF THE INCONSISTENCIES IN THE SYSTEM, AND WHEN YOU START APPLYING A BUNCH OF NUMBERS IN A VERY DRASTIC METHOD, AS HAVE BEEN DONE -- CONGRESS IS THE ONE WHO SET THIS STATUTE, SO I SHOULDN'T REALLY BE CRITICIZING THE GUIDELINES NOW. THIS IS STRICTLY CONGRESSIONAL. BECAUSE WHAT YOU'RE TRYING TO ASK ME TO DO IS TO SHIFT TO THE GUIDELINES, BECAUSE IF WE SHIFTED TO THE GUIDELINES, WE'D DO IT MUCH EASIER AND I WOULD CERTAINLY NOT IMPOSE THE 20 MONTHS UNDER THE GUIDELINES. BUT UNDER THE STATUTE, I FEEL THAT I'M COMPELLED TO DO IT AS I'M COMPELLED IN MANY OTHER MANDATORY MINIMUM SENTENCES.

I IMPOSED LAST WEEK OR THE WEEK BEFORE -- LAST WEEK, I GUESS IT WAS, OR THE WEEK BEFORE -- SOME MANDATORY MINIMUM SENTENCES THAT WERE JUST -- THERE'S NO OTHER WAY TO DESCRIBE THEM OTHER THAN THEY'RE HARSH. WELL, EVEN BY MY STANDARDS LET ME SAY THEY'RE HARSH, AND MY STANDARDS ARE NOT KNOWN TO BE LENIENT.

MR. SMITH: SO, DO I GATHER THEN THE COURT --

THE COURT: I JUST DON'T FEEL I HAVE ANY CHOICE BUT TO REVOKE PROBATION AND IMPOSE 20 MONTHS --

MR. SMITH: ALL RIGHT.

THE COURT: -- UNDER THAT STATUTE, AND I FRANKLY DON'T LIKE IT.

MR. SMITH: I'M RELATIVELY NEW AT THIS JOB AND I DON'T KNOW -- IF THAT'S SETTLED, AND IT SOUNDS LIKE IT IS, I DON'T KNOW IF THIS IS THE APPROPRIATE WAY OF DOING IT, BUT THERE IS ONE ADDITIONAL MATTER I'D LIKE TO TAKE UP WITH THE COURT BEFORE THE COURT IMPOSES SENTENCE VERY BRIEFLY.

THE COURT: SURE. NO, YOU GO RIGHT AHEAD. YOU REPRESENT YOUR CLIENT.

MR. SMITH: YOUR HONOR, AT THE TIME THE ORIGINAL SENTENCE WAS IMPOSED MR. GRANDERSON WAS IN THE ZERO TO SIX MONTH RANGE. HE HAD A BASE LEVEL OF 6 UNDER THE GUIDELINES PRESENTED BY THE PROBATION OFFICER AND WE FILED AN OBJECTION AS TO WHETHER HIS UNDERLYING OFFENSE HAD BEEN PROPERLY PUT IN THE BASE LEVEL OF 6 OR WHETHER IT SHOULD HAVE BEEN MOVED TO A DIFFERENT GUIDELINE FOR -- I THINK IT WAS TAMPERING WITH MAIL, WHICH WAS ONLY A LEVEL 4. THE COURT ASKED WHETHER IT MADE A DIFFERENCE AND I INDICATED THAT SINCE IT WAS ZERO TO SIX I DIDN'T THINK IT DID.

IN RETROSPECT, YOUR HONOR, NOW THAT WE'RE AT REVOCATION TIME, I THINK IT DID MAKE A DIFFERENCE. HAD HE BEEN A BASE LEVEL 4 RATHER THAN A 6, THE COURT'S MAXIMUM SENTENCE WOULD HAVE BEEN THREE YEARS OF PROBATION RATHER THAN FIVE YEARS OF PROBATION, AND I GUESS I WOULD ASK THE COURT TO RECONSIDER ITS EARLIER RULING THAT HE BE PUT ON FIVE YEARS PROBATION AND PERHAPS CONSIDER THE POSSIBILITY OF REVISING THAT. IT WOULD BE AN ILLEGAL SENTENCE OF FIVE YEARS IF THE OTHER GUIDELINE HAD BEEN USED IN THIS CASE.

THE COURT: I HAVE DIFFICULTY WITH THAT, MR. SMITH,

BECAUSE I DON'T THINK I CAN MODIFY THE SENTENCE AT THIS TIME. AND IN SOME WAYS I'M GLAD TO BE RID OF OLD RULE 35, BUT I DON'T THINK IT'S FAIR. THE BIGGEST HEADACHE I EVER HAD WAS EVERYBODY ALWAYS WANTING ME TO MODIFY THE SENTENCES UP TO 120 DAYS. BUT, YOU KNOW, IF YOU'VE MADE A MISTAKE OR YOU'VE HAD A SECOND THOUGHT ABOUT SOMETHING, YOU CAN'T REDO IT NOW. I WOULD IN MY OWN CONSCIENCE RATHER TRY TO REASON MY WAY THROUGH THAT STATUTORY LANGUAGE INTO WHAT YOU WERE SUGGESTING RATHER THAN TRY TO DO WHAT YOU NOW SUGGEST. I CONSCIOUSLY COULD FIND IT EASIER PROBABLY --

MR. SMITH: YES, YOUR HONOR.

THE COURT: -- TO DO IT THE OTHER WAY.

MR. SMITH: I DON'T LIKE MENTIONING IT MYSELF, YOUR HONOR.

THE COURT: THAT'S ALL RIGHT.

MR. SMITH: FOR THE RECORD, YOUR HONOR, I WOULD NOTE THAT THERE ARE SOME -- I UNDERSTAND THIS COURT HAS NOT, BUT THERE ARE SOME JUDGES IN THIS DISTRICT THAT HAVE FOUND THAT USE DOES NOT NECESSARILY EQUATE WITH POSSESSION AND HAVE IMPOSED SENTENCES BENEATH THE ONE-THIRD MANDATORY MINIMUM.

THE COURT: THAT MAY BE, AND IF THERE'S SOME APPELLATE AUTHORITY THAT SAYS THAT, THEN THAT'S LAW FOR ME TO FOLLOW. BUT IN ABSENCE OF ELEVENTH CIRCUIT OR SUPREME COURT APPELLATE AUTHORITY TO THE CONTRARY, I MUST INTERPRET THE LAW, AND I THINK THE INTERPRETATION IS THE WAY I'VE SAID IT. IT'S NOT AN INTERPRETATION I LIKE.

MR. SMITH: YES, YOUR HONOR.

THE COURT: NOW, IF SOMEBODY ELSE EITHER SINCERELY BELIEVES THAT OR THEY FIND THAT AS AN EXPEDIENT WAY TO GET OUT FROM DOING SOMETHING THEY DON'T WANT TO DO -- AND I'M NOT GOING TO DO THAT BECAUSE I THINK MY OATH SAYS I SHOULDN'T. IF YOU START CHANGING THE LAW TO SUIT ONE SITUATION, THEN YOU'LL DO IT FOR ANOTHER, AND I'LL DO MY JOB AND CONGRESS WILL DO THEIRS. CONGRESS DID THEIRS AND I'M TRYING TO DO MINE UNDER IT. AND I DON'T LIKE WHAT THEY DID. IF THEY DON'T LIKE IT, THEN THEY SHOULD COME BACK AND CHANGE THE LAW SO THAT I CAN FIT WITHIN IT. AND I'M VERY SYMPATHETIC WITH YOUR ARGUMENT. YOU DON'T HAVE TO APOLOGIZE FOR TRYING TO MAKE THEM. YOU REPRESENT YOUR CLIENT; THAT'S WHAT I WANT YOU TO DO. THAT'S WHAT I WOULD DO, WHAT I DID WHEN I WAS THERE. EVEN THOUGH I REJECT YOUR ARGUMENTS, THERE'S NOTHING WRONG WITH YOUR TRYING TO MAKE THEM.

ALL RIGHT. IN CASE NUMBER 91-1, ON THE ADMISSION OF THE VIOLATION OF CONDITIONS OF PROBATION, THE COURT FINDS THE DEFENDANT'S VIOLATED THE CONDITIONS OF PROBATION IN THIS CASE, AND PURSUANT TO SECTION 3565 -- IS IT (A)? I BELIEVE IT IS.

MS. KING: YES, SIR.

MR. SMITH: YES, YOUR HONOR.

THE COURT: OF TITLE 18 OF THE UNITED STATES CODE, REVOKES THE PROBATION AND SENTENCES THE DEFENDANT, RALPH STUART GRANDERSON, JR., TO 20 MONTHS CUSTODY OF THE BUREAU OF PRISONS, AND IN ADDITION THERETO, TO THREE YEARS OF SUPERVISED RELEASE TO

FOLLOW. ALL RIGHT, ANYTHING FURTHER?

MS. KING: YOUR HONOR, WE HAVEN'T DISCUSSED WHETHER OR NOT THE COURT IS GOING TO ALLOW THE DEFENDANT TO SURRENDER OR REMAND HIM TO CUSTODY.

THE COURT: HE'S FREE NOW, RIGHT?

MS. KING: THAT'S CORRECT, SIR.

MR. SMITH: HE WASN'T EVEN ON BOND. WELL, HE MAY BE ON BOND. HE APPEARED TODAY, YOUR HONOR.

THE COURT: WHAT'S YOUR REQUEST?

MR. SMITH: WE WOULD REQUEST VOLUNTARY SURRENDER.

THE COURT: I'LL DEFER EXECUTION. DO YOU HAVE ANY OBJECTION TO IT?

MS. KING: NO, YOUR HONOR.

THE COURT: I SEE NO PROBLEM WITH THAT. I'LL DEFER THE EXECUTION OF THAT SENTENCE AND DIRECT THAT THE IMPRISONMENT PORTION OF THE SENTENCE BE DEFERRED UNTIL -- JUDY, I DON'T HAVE A CALENDAR. IF YOU'LL GIVE ME A DATE OR SOMETHING.

HOW MUCH TIME DO YOU WANT OR NEED? YOU'D LIKE 20 MONTHS, WOULDN'T YOU?

MR. SMITH: WE'D LIKE AN APPEAL BOND, YOUR HONOR, IF THAT'S POSSIBLE.

THE COURT: WELL, I DON'T OBJECT TO YOUR APPEALING THIS, CERTAINLY. FRANKLY, I WOULD OTHERWISE SENTENCE HIM TO SOMETHING IN A YEAR RANGE. I THINK YOU COULD PROBABLY GET AN APPEAL DECIDED BEFORE THAT WOULD BE UP ANYWAY. I WOULD HOPE YOU

WOULD APPEAL IT AND WIN. I DON'T OFTEN LIKE TO BE REVERSED, BUT IF YOU DID, IT WOULD BE A CASE THAT WOULDN'T BOTHER ME ON THE INTERPRETATION OF THE LAW ISSUE.

MR. SMITH: YES, YOUR HONOR.

THE COURT: THE FACTS IS SOMETHING DIFFERENT, BECAUSE I FIND WITHIN THE MEANING OF THE STATUTE THAT HE POSSESSED COCAINE, I BELIEVE IT WAS.

MS. KING: YES, YOUR HONOR.

MR. SMITH: YES, YOUR HONOR.

THE COURT: I BELIEVE IT WAS COCAINE. ALL RIGHT, I WILL DEFER THE EXECUTION. THAT'S WHAT WE WERE LOOKING AT. I'D SAY OCTOBER -- I MEAN AUGUST THE 26TH. THAT'S A MONTH.

MR. SMITH: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT, ANYTHING FURTHER?

MR. SMITH: NO. THANK YOU, YOUR HONOR.

MS. KING: NO, YOUR HONOR.

THE COURT: ALL RIGHT, WE'LL RECESS TILL FURTHER ORDER.

* * *

(HEARING CONCLUDED)

* * *

FEDERAL DEFENDER PROGRAM, INC.
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
SUITE 3512, 101 MARIETTA TOWER
ATLANTA, GEORGIA 30303

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May 19, 1993

Mr. William K. Suter
Clerk
United States Supreme Court
Washington, DC 20543

Re: United States v. Ralph Stuart Granderson
92-1662

Dear Mr. Suter:

Enclosed herewith is the original Brief in Opposition to the United States of America's Petition for a Writ of Certiorari plus twelve copies in the above-styled case. Also included are the Respondent's Motion to Proceed in Forma Pauperis and Proof of Service.

Please accept these documents for filing.

Very truly yours,

Gregory S. Smith
Attorney for Respondent

GSS:SW

Enclosures

FEDERAL DEFENDER PROGRAM, INC.
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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ATLANTA, GEORGIA 30303

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May 19, 1993

William C. Bryson
Acting Solicitor General
Department of Justice
Washington, DC 20530

Re: United States v. Ralph Stuart Granderson
No. 92-1662

Dear Acting Solicitor General:

Enclosed please find a copy of the Brief in Opposition to the United States of America's Petition for a Writ of Certiorari which I have filed on behalf of Mr. Granderson.

Very truly yours,

Gregory S. Smith
Attorney for Respondent

GSS:SW

Enclosure